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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,956	03/11/2004	Larry E. Wittmeyer JR.	000409-0167	4878

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/797,956

Applicant(s)

WITTMAYER, LARRY E.

Examiner

Nasser Ahmad

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 and 54-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-38, drawn to a stack of flexible sheet, classified in class 428, subclass 40.1.
  - II. Claims 39-44, drawn to a method of using a stack of flexible sheets as an animation flip pad, classified in class 352, subclass 50.
  - III. Claims 45-43, drawn to a method of using a stack of flexible sheet as a recreational toy, classified in class 156, subclass 197.
  - IV. Claims 54-62, drawn to an expandable recreational toy, classified in class 446, subclass 486.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Groups II & III are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a materially different process such as forming a memo pad.

3. Inventions Group II and Group III are directed to different and distinct methods of using the flexible sheet and are capable of supporting independent inventions.

Art Unit: 1772

4. Inventions Group I and Group IV are directed to different and distinct products of flexible sheet and an expandable recreational toy, respectively. The two Groups are capable of supporting independent inventions.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Lana Knedlik on September 28, 2005 a provisional election was made without traverse to prosecute the invention of Group III, claims 45-53. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-44 and 54-62 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye (5390819).

Kaye relates to a method of using a stack of flexible sheet (10) as a recreational toy.

The method comprising providing a stack of non-foldable sheets (30) disposed in a stack, with adhesive disposed on alternate opposite edges of successive sheets in the stack, and spreading the stack so that at least a portion of the flexible sheets are

Art Unit: 1772

positioned such that successive sheets touch each other at the areas of adhesive but does not contact said sheets otherwise in the areas where there is not adhesive (figures 4 and 6). The adhesive provides for peel resistance when the sheets are pulled from the strack and the resistance would provide for curl resistance. However, Kaye fails to teach that the peel adhesion of successive sheets is at least 150 g when the sheets are pulled laterally at 180 degrees. It would be obvious to one having ordinary skill in the art to modify Kaye by providing a peel resistance of at least 150 g because the peel resistance would provide for curl resistance, while permitting the spreading of the sheets in the stack, based on optimization through routine experimentation.

9. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye in view of James (2415012).

Kaye, as discussed above, fails to teach that the spreading is performed by having a user place one end of the stack in the palm of one hand and the other end on the palm of the other hand. James discloses a process of using a spreadable stack toy. As shown in figures 3-5, the two ends of the stack are placed on the two palms of the two hands and moving the hands up and down. Figure-7 shows that the stack is permitted to expand downwardly from an upper surface to a lower surface, and/or move to a third surface. Therefore, it would have been obvious to one having ordinary skill in the art to utilize James' teaching of placing the ends of the expandable stack on a palm or surface and permitting it to expand to a lower palm or surface in the invention of Kaye with the motivation to provide amusement to the user.


Art Unit: 1772

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nasser Ahmad 9/29/05  
Primary Examiner  
Art Unit 1772

N. Ahmad.  
September 29, 2005.